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No. 85-308

In the Supreme Court of the United States

OCTOBER TERM, 1985

ANDERSON COUNTY, TENNESSEE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that Tennessee's local ad valorem real property tax may be imposed on the manager's interest in a federally-owned atomic energy plant that is managed for the government by Union Carbide Corporation pursuant to a long-standing cost-plus management contract. On November 5, 1984, the Supreme Court of Tennessee, in *Union Carbide Corp.* v. *Alexander,* 679 S.W.2d 938 (Pet. App. A20-A28), construed the Tennessee tax (Tenn. Code Ann. § 67-5-502(6) (1983)) to be inapplicable to Union Carbide's contractual interest in the plant. The court rejected petitioners' argument that the tax was broad enough to reach a possessory interest in real estate, and held that Union Carbide's right to use the plant did not constitute an interest in real property (Pet. App. A24). Petitioners did not seek review of that decision in this Court.

In the instant federal court proceedings,[1] the United States Court of Appeals for the Sixth Circuit followed the ruling of the Tennessee Supreme Court and held that Union Carbide had no taxable interest in the plant (Pet. App. A8-A9). That decision is merely a straightforward application of state law as authoritatively construed by the highest court of the state. The decision is clearly correct and does not warrant further review by this Court.

Petitioners do not directly challenge the decisions of either the Tennessee Supreme Court or of the court of appeals. Rather, they maintain that the case should be remanded because the federal *district* court did not have before it allegedly inconsistent representations made by Union Carbide in California tax proceedings relating to the imposition of California's unitary tax. These representations, which were brought to the attention of both the Tennessee Supreme Court and the Sixth Circuit,[2] were apparently to the effect that Union Carbide had exclusive use and control of the Tennessee plant. Petitioners expressly raised the same contention in the court below, and the Sixth Circuit "treat[ed] this argument in detail" and properly rejected it as "not material" and without merit. Pet. App. A9-A11. As the court of appeals stated (Pet. App. A10), Union Carbide's representation that it had exclusive use and occupancy of the plant, for purposes of measuring its California tax base, "does not undermine" the decision under Tennessee law that the company's interest in the plant is not a taxable real property interest.

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[1]In this case the United States sought a declaratory judgment invalidating the tax assessment. See Pet. App. A4-A5.

[2]Petitioners note (Pet. 13) that Union Carbide's brief in the Tennessee Supreme Court referred to its representations in the California tax proceedings.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

SEPTEMBER 1985